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ABSTRACT

In response to declining state funding levels and limited options for increasing revenues, this report reviews existing Texas state legislation on community college district expansion via annexation and recommends possible statutory modifications to ease the process of annexing territory to existing districts. First, introductory material discusses the concomitant problems of decreasing state appropriations and increasing student enrollments and community demands; summarizes legislation related to district enlargement, expansion, extension, and annexation; and reviews the charge to and activities of the Advisory Committee on Annexation. Next, the report analyzes various options to improve the annexation code, including the adoption or modification of: (1) state mandated service areas; (2) a statewide ad valorem tax; (3) chargeback systems; (4) uniform out-of-district fees; (5) a policy to expand districts to include all state property in a college tax district; and (6) a revised code. Both advantages and disadvantages are explored for each option. Next, 10 changes to the current education code are recommended, and a discussion and rationale are offered for proposals related to service areas, annexation, disannexation, and enrollment caps. Appendixes include the results of a survey of Texas community colleges regarding the annexation code and proposed language to modify the Texas Education Code and Coordinating Board Rules. (AJL)

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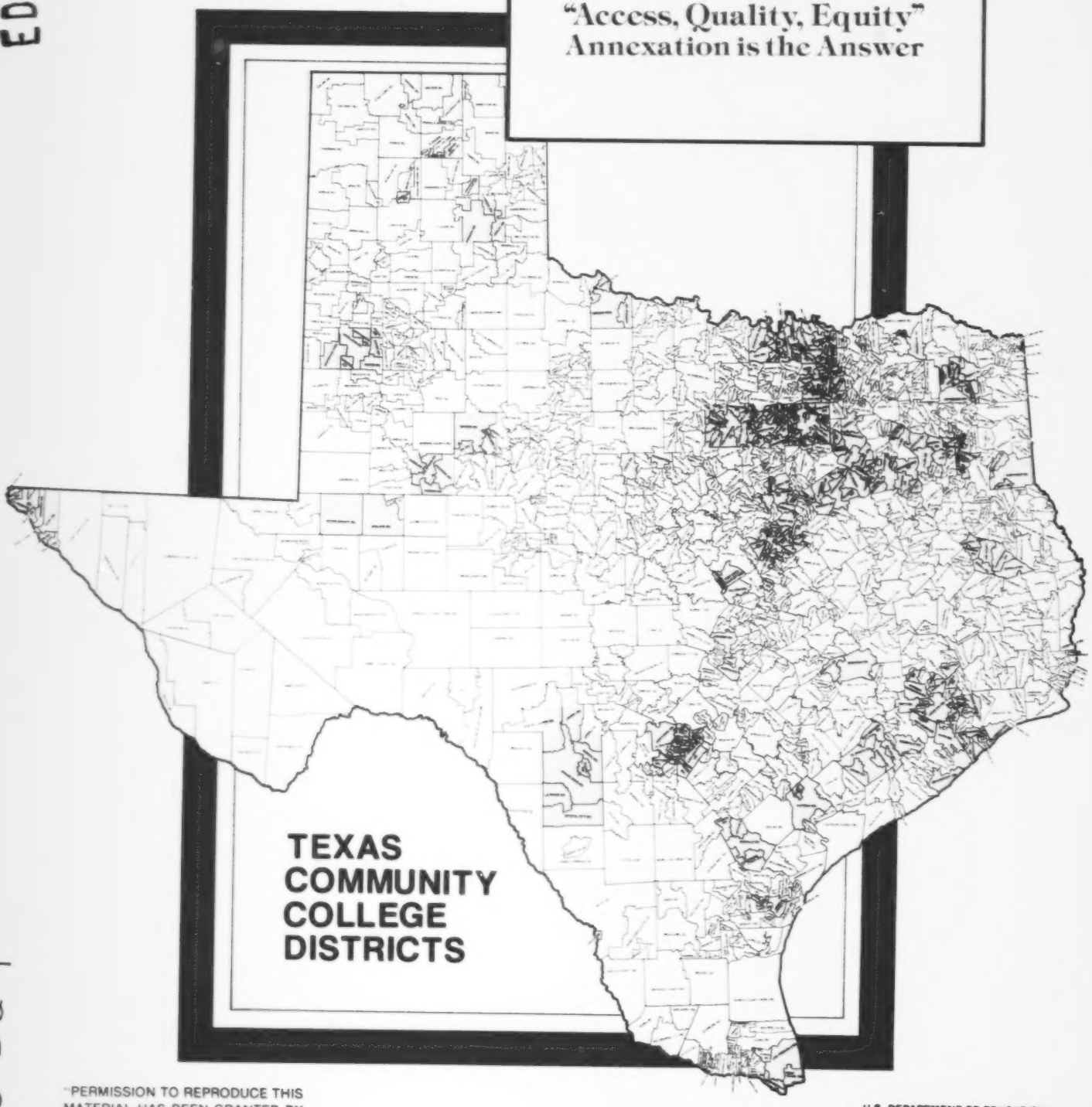

TEXAS COMMUNITY COLLEGE DISTRICTS

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"Access, Quality, Equity"
Annexation is the Answer

FINAL REPORT AND RECOMMENDATIONS
OF THE ADVISORY COMMITTEE ON ANNEXATION
TO THE
TEXAS HIGHER EDUCATION
COORDINATING BOARD

October 1988

"We find that Texas Annexation Law
is a patchwork quilt
in immediate need of reweaving."

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AUSTIN COMMUNITY COLLEGE

Dr. Dan Angel, President

P.O. Box 2285 Austin, Texas 78768 512 495-7612

October 27, 1988

Dr. Kenneth H. Ashworth
Commissioner
Texas Higher Education
Coordinating Board
P.O. Box 12788
Austin, Texas 78711

Dear Commissioner Ashworth:

The State of Texas has a community college system that is faced with dramatically increasing enrollments, declining state revenues, and greater demands on local communities for economic support.

In the last six years, there has been a six percent decrease in state appropriations. Student enrollment has increased by 30,000 while state financial support has decreased by over 50 million dollars.

Last April you established an Advisory Committee on Annexation. You charged our committee with reviewing existing legislation on annexation by community college districts and making recommendations to the Board concerning procedures to facilitate annexation of territory by existing community colleges rather than the creation of new ones.

Over the past six months, our committee has diligently examined the current laws, researched other state systems, and deliberated at some length.

We find that Texas Annexation Law is a patchwork quilt in immediate need of reweaving!

The annexation law must be streamlined, codified, and responsive to the needs of our time.

BOARD OF TRUSTEES
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There comes a time when a state struggles to adequately support the institutions that have already developed. There comes a time when further duplication of effort adds an even greater strain on limited resources. There comes a time when public policy must shift the strength of the state's limited economic capabilities to the full support of its colleges.

Now is that time in Texas!

We have reached the stage when more colleges and fewer resources simply will not work. Texas--like Florida, Michigan, Virginia, Washington, and New Jersey--must start thinking of our community college system as (at least relatively) complete!

The realization that new community colleges will be few and far between dictates an important urgent message: **Public policy makers must act swiftly in removing barriers and impediments so that the existing community college network can deliver access, quality, and equity for all Texas citizens.**

Sincerely,

Dan Angel
Chairman, Advisory
Committee on Annexation

ADVISORY COMMITTEE ON ANNEXATION

COMMITTEE REPORT

PRESENT

There are 49 community college districts in Texas. These 49 districts provided educational services to 329,921 students in the Fall of 1987. This represents 47.4% of all students enrolled in public higher education in Texas. State funding levels are declining, yet there is a corresponding increase in students being served and the added burden of externally imposed demands on the community college system. In the Fall of 1989, for example, all colleges and universities will begin implementing the requirements of the TASP program. This will require an operational re-shaping as well as new revenue requirements.

State funding levels are declining, yet there is a corresponding increase in students being served and the added burden of externally imposed demands on the community college system.

Each college in the community college system is faced with the dilemma of providing greater levels of service with few options on how to increase revenues. Growing populations, aging infrastructures, and erosion in the local tax bases due to weaknesses in local economies have resulted in limited revenue options. The revenue enhancement options available are either (a) to increase the burden on students through tuition and fee increases or (b) to increase the local tax rate or (c) to broaden the tax base by expanding the district. Option A directly impacts the issue of access which has been the community college benchmark. Additionally, the revenue achieved cannot make up the difference in lost revenue and the costs of new services. Option B represents a decision which must be made by elected officials who are very sensitive to local citizens besieged with tax increases from virtually all public entities. The "no tax increase" sentiment is omnipresent and it is unlikely that much revenue enhancement will derive from increased taxes. Option C offers the community colleges a viable option only if the statutes are written to uniformly help all colleges in the system and if it is recognized that many communities avoid direct support of existing community colleges while deriving direct benefit.

Annexation offers the community colleges a viable option only if the statutes are written to uniformly help all colleges in the system.

While the state fiscal system is momentarily in balance after the infusion of almost $6 billion in new revenues from 1987 tax legislation, it is apparent that we have reached an era of legislative toughening. The decline in state dollars will continue yet the technicalities of the law prohibit, at least de facto, reasonable opportunities for revenue growth through district expansion.

HISTORY

The current code does not provide all community colleges with a consistent set of guidelines that could result in larger districts and a broadened tax base.

Prior to 1929, there was no general law related to creation of community junior colleges. While provisions for junior colleges are not present in the State Constitution, it *appears* that they were created under the authority of the State Department of Education. Their control was initially provided by a local school district board. It is not clear what statutory authority the State Department of Education utilized for creation of junior colleges before 1929. The first general state law authorizing the establishment of junior colleges was passed as HB 10 (Kinnear) in 1929.

The 1929 law began the chronology of laws authorizing creation and annexation of junior colleges in Texas. There is little written about these laws until the late 1960's. One relatively substantial report on junior colleges was written by the Texas Legislative Council in 1950. This report describes the history and analysis of the particular geographical population and governmental entity "brackets" created and followed between 1929 and 1967.

Community College Disticts in Texas have been developed in almost every possible manner: districts composed of multiple school districts limited to the area within the limits of a city; county-wide districts; districts encompassing a full county plus additional territory in one or more additional counties; and regional districts containing two or more counties.

The numerous annexation laws related to junior colleges which have been enacted since the first general law on junior college annexation can be characterized as *attempts to modify a relatively inflexible general law for specific purposes*. Most of the laws passed since 1929 were intended to address the problems of one or a few districts at a time. As a result, the Texas Education Code now contains several different sections relating to annexation or expansion including Sections 130.061 through 130.068 and Sections 130.071 through 130.073. The bills passed after 1929 can be identified by their "bracketing" by population of geographical areas, by population of scholastics in the district and at the high school level, and by types and portions of governmental units which are in the district. Some recent examples of "bracketing" bills are:

- **HB 1182** (Hall/Laredo, 1981)
  Authorizes a junior college located within part of a city, town, or village to annex the rest of the land within that city, town, or village if certain criteria are met (including a $25 million annual income for the Junior College District). HB 1182 also affected Paris, Texarkana, Laredo, Amarillo and Del Mar Colleges.

- **HB 389** (Henderson/Houston, 1981)
  Allowed annexation which meets the following criteria: is in a school district but is not contiguous with any junior college districts; is not more than 5 miles from the annexing junior college; is located within the same county as the junior college; and the county has a population of 1,500,000 or more. This bill helped the Tomball ISD become part of the North Harris County District.

- **SB 357** (Sarpaulius/Amarillo, 1983)
  Allowed a union junior college district with boundaries coterminous with an ISD and located in less than a whole county to annex the rest of the county. This bill helped the Amarillo College.

- **HB 736** (Garcia/San Antonio, 1983)
  Removed the $25 million annual minimum income provision from the 1981 law which authorized expansion into the rest of the city, town, or village under certain circumstances. This bill helped the Alamo Community College District.

- **HB 501** (Garcia/San Antonio, 1985)
  Allowed a junior college district which is located in part of a county which has 900,000 or more residents to annex the rest of the county territory. This bill helped the Alamo Community College District.

In modifying the "inflexible" general law for specific purposes, the provision of the Education code covering enlargement, expansion, extension, and annexation has become a patchwork quilt of special interest legislation. The current code does not provide all community colleges with a consistent set of guidelines that could result in larger districts and a broadened tax base.

The primary charge of this committee was to review existing legislation on annexation by community college districts and to recommend possible modifications which will ease the process of annexing territory to existing districts.

COMMITTEE CHARGE

The primary charge of this committee was to review existing legislation on annexation by community college districts and to recommend possible modifications which will ease the process of annexing territory to existing districts. Within this primary charge, the committee was directed to address the issues of Board representation and community identity in the recommendations.

The committee was also asked to reexamine existing Coordinating Board rules and regulations to assure that they are consistent, in both intended and unintended outcomes, in carrying out a philosophy of providing appropriate access while requiring a measure of tax support by the local population being served.

WORK OF THE COMMITTEE

In responding to the committee charge, our work initially focused on accurately defining the issue(s) and outlining possible solutions. Sub-committees were formed to work on these two areas. Additionally, all community college districts were surveyed in order to assess each institution's specific concerns about the annexation code; recent history of annexation efforts; level of enrollment and population outside existing district but within service area; and specific advice to the committee. The results of this survey are presented as Appendix 1.

All community college districts were surveyed in order to assess each institution's specific concerns about the annexation code.

Issues

There are many areas of the state that do not levy taxes to support a community college, even though residents of those areas cross county or other district lines to attend a community college as an out-of-district student or the colleges establish off-campus programs to respond to local requests coming from outside the legal district.

It follows that these residents escape the significant burden shouldered by residents of the "home" district in supporting the physical plant, utilities, and other appropriate costs of the community college that are paid with local tax funds while all residents in the legal district pay taxes to perpetuity to support the community colleges and must also pay the required tuition and fees for direct-use while the out-of-district students pay only tuition differential on a direct-use basis.

Currently 56% of the total ($668,707,344,458) tax value of property in Texas is contained within the legal districts of the 49 community colleges. This results in a taxable base of $372,000,000,000 from which the colleges now raise $224 million per year based on an average tax rate of 10.77¢.[1]

This issue has become even more critical in 1988 as leaders search for tax equity to provide the tax support necessary for operating quality community colleges and as the State of Texas reduces the level of state support from 64% in 1984 to approximately 54% in 1988, with a recurring admonition that state support must level off at 50%. As state dollars decline and enrollment increases, there is less money available to support more students.

During the last five years, over 350,000 Texans residing outside the 49 community college's legal districts have accessed the college's services. Each year approximately 23% of all enrollments in community colleges are Texas residents who live outside the legal districts. Both the percentage and actual numbers are increasing. There are 254 counties in the state of Texas. During the Fall 1987 Semester, *students enrolling in the state's 49 community colleges came from all 254 counties.*

[1]Texas State Property Tax Board, June 1988

Service Areas

The students coming to our community colleges live in areas that can be defined as our service areas, that territory not included in a legal community college district.

The concept of "service area" is well entrenched in statute and regulation. Most of the "turf battles" of the 1960's and 70's have been settled through higher education regional councils and various "agreements" established after years of jurisdictional conflict. In some areas, however, the boundary lines of service areas are not clearly drawn or commonly agreed to. This lack of definition complicates not only the question of which community college should be the provider of choice to which area of the state; it also poses potentially serious legal questions in an annexation procedure since Section 130.066(a) of the Education Code appears to anticipate Coordinating Board defined service area.

Currently 56% of the total ($668,707,344,458) tax value of property in Texas is contained within the legal districts of the 49 community colleges.

At present, community college service areas are informally drawn in Texas. In most cases this arrangement is working satisfactorily. Future practices related to annexation, funding services for out-of-district students, branch campus districts, and other issues may require a stricter definition of service area boundaries.

The underlying need to address the issue of "service areas" grows out of the formal acknowledgement of the concept of H.B. 2182 (section 130.0011 of the Texas Education Code). Specifically, Section 130.0011 states, in part:

> Texas public junior colleges shall be two years institutions serving *their local taxing districts and service areas in Texas*.

In addition, the recent Joint Committee Report on cooperation between community colleges and the Texas State Technical Institute (accepted by the Coordinating Board March 4, 1987) acknowledges the service area concept. The Joint Committee Report states:

> The primary basis for dividing programs between community colleges and the Texas State Technical Institute should be the size of the geographic areas required to substantiate the need for the programs in question.
>
> . . . There should be no restrictions on the technical program offerings at community colleges that can be justified by the needs of the individual college's service area.

This issue has become even more critical in 1988 as leaders search for tax equity to provide the tax support necessary for operating quality community colleges and as the State of Texas reduces the level of state support from 64% in 1984 to approximately 54% in 1988.

ANALYSIS AND OPTIONS

The committee examined various options that could legislatively address improving the current annexation code while improving the chances for revenue enhancement locally. As part of the committee's work, discussions were held with community college leaders in other states and chief executives of national and regional organizations. These actions lead to an investigation of the following options.

1. state mandated service areas
2. statewide ad valorem tax
3. chargeback systems
4. uniform out-of-district fees
5. all state property in a community college tax district
6. revise current annexation code

1. State Mandated Service Areas

During the last five years, over 350,000 Texans residing outside the 49 community college's legal districts have accessed the college's services.

Current Status

The current practice in the State of Texas reveals a concept of "service area" which is based primarily on historical precedent as well as institutional agreements regarding responsibility for the delivery of programs and services. The Regional Councils of Higher Education promotes inter-institutional cooperation and assists in determining area responsibility. Proximity and mileage is used as a means of resolving disputes. (See map on centerfold.)

The current interpretation of "service areas" represents, however, only half of the service component. Approximately 23% of all students enrolled in the community college system cross district lines and receive "service" from the 49 colleges. As this in-migration has long been a pattern, *it is clear that our collective service area is the whole state. In the Fall 1987 Semester all 254 counties had students attending the state's community colleges.*

Service areas should be considered as both *"where we go"* to establish programs and services and *"where people come from"* to access existing programs and services. The advantages/disadvantages of creating state mandated service areas for *"where the community colleges go"* are:

Advantages

a. The concept of defined service areas for community colleges could assist in the broadening of the institutional financial base. H.B. 2181 identifies institutional responsibility in out-of-district locations. For example, the institutions are required to obtain articulation agreements with area secondary schools and carry academic services to out-of-district locations where at the present time there is no financial support. This type of responsibility in a mandated service area may serve as the basis for an upward adjustment of an institution's financial base.
b. Another advantage is the institution's ability to sharply focus on its role and mission through direct response to the educational needs of the business and industrial community within its service area.

c. The service areas designation may complement the existing Regional Higher Education Council concept.
d. Finally, it is possible that some geographic areas are not served by the existing community college system. The new service area designation for each college would assurably cover all geographic regions.

Disadvantages

a. The implementation of the state mandated service area could broaden an institution's educational responsibilities without increasing the financial base. For example, institutions may be required to offer specialized programs (high cost) in its service area without additional financial compensation.
b. Institutions located in close proximity to other community colleges may be in conflict over historically determined service boundaries. This overlap of responsiblity is a basis of potential conflict between institutions.
c. Another result of the mandated service area concept is the contribution to the growing trend toward the centralization of higher education in the state. One of the great assets of the community college system has been its flexibility to offer various services to its clientele. Centralization tends to erode the local prerogative.

Each year approximately 23% of all enrollments in community colleges are Texas residents who live outside the legal districts.

2. Statewide Ad Valorem Tax

Current Status

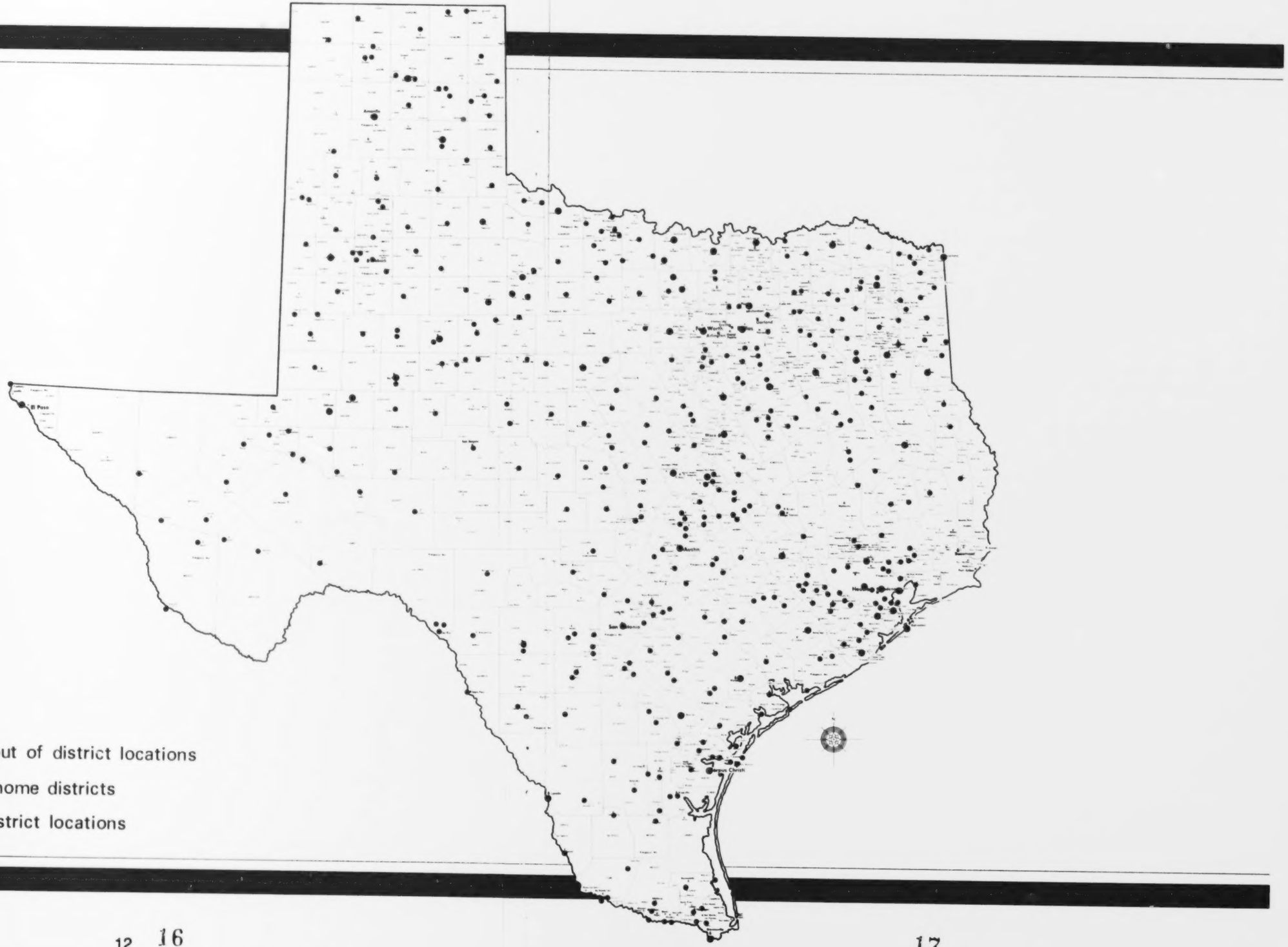
The adoption of a statewide ad valorem tax levied for the specific use of reimbursing community colleges for the education of students from outside the local taxing districts would be a first in the United States. No other state incorporates such a practice in the financing of community/junior colleges.

The principle behind the establishment of such a tax would be an attempt at a more equitable means of equalization of financial support by those living outside of existing community college taxing districts.

At present, community college service areas are informally drawn in Texas.

Advantages

a. Ad valorem tax is a stable income source with characteristics generally accepted as desirable traits:
   - Operated as a direct tax, with most people understanding its purpose.
   - Easily collected by the regular machinery of state and county government.
   - Regulated and controlled by local boards of education according to the provisions of state law.
   - Avoidance of payment is almost impossible.
   - Highly productive – mainstay of local governments for generations.
   - Highly visible – provides direct linkage between services provided by local government and the cost of those services.



- Community college out of district locations
- Community college home districts

University out of district locations

It is clear that our collective service area is the whole state.

b. Texas community/junior colleges could be assured of a specified amount of funding forthcoming from the state for supplementing out-of-district students. Conceptually, colleges would receive revenues representing that portion of the program normally covered by local property tax revenues.
c. Community/junior colleges sharing in revenues generated by a statewide ad valorem tax might prove a more equitable means of sharing the burden of payment.
d. A statewide ad valorem tax would reduce or eliminate the rationale supporting the creation of new community/junior college systems.

Disadvantages

a. Could be a step away from local control and toward state centralization – a direction thought to be philosophically backward by a unanimity of community/junior college presidents and local Boards of Trustees.
b. Depending on the tax rate set, might not generate as much revenue as out-of-district fees already being collected by some community/junior colleges.
c. Raises question of what would happen to local property tax rates if statewide ad valorem tax was instigated.
d. Equity question . . . should statewide ad valorem tax be enacted, how would revenues be allocated to colleges?
e. Could open up rich district vs. poor district issue.

Service areas should be considered as both "where we go" to establish programs and services and "where people come from" to access existing programs and services.

3. Chargeback Systems

Background

"Chargeback" is a provision which would allow community colleges to bill part or all of costs to the home county or school district of the out-of-district student.

The philosophy on which the chargeback principle is based is that all residents of the state should have access to all community college programs without working financial hardship on either the student or the college providing the education.

The chargeback system would allow 1) an individual not residing in a community college district to attend a public community college and have the amount by which out-of-district tuition exceeds resident tuition charged back to the public school district (or other entity) of his/her residence, and 2) an individual residing in a community college district who wishes to enroll in a program not offered by his/her own community college to enroll in another district and have the amount by which out-of-district tuition exceeds resident tuition charged back to the community college district of his/her residence. The chargeback principle conceptually is equal to the amount of local property tax revenue that would be reasonable to support the cost of educating a student if he/she were living in the community college district.

Current Status

Currently, the State of Texas has no chargeback system applicable to community colleges. Two state community college systems are actively involved in chargeback processes – Kansas and Illinois.

Kansas. Kansas has a credit-hour driven formula for generating revenue from the state, but Kansas does not provide much financial support from the state level. For example, during 1987–88, the state of Kansas provided 26% of community colleges' budget expenditures. During 1988–89, that sum will increase to 30%. Student tuition statewide amounted to about 14% of all budget expenditures. Kansas has 105 counties. A total of 87 counties do not have a community college, while 18 do.

Under Kansas law, a community college may bill the county for a student who is not a resident of the county in which the college is located. The community college billed the student's home county of residence $23/cr. hour during 1987–88; increasing to $24 per credit hour in 1988–89.

Each recommendation is intended to streamline the code; create statutory uniformity; and improve access, quality and equity via annexation.

Illinois. When the Illinois public junior (later community) college system was formed in 1965, authors of the enabling legislation included two chargeback provisions which 1) allowed an individual not residing in a community college district to attend a public community college and have the amount by which out-of-district tuition exceeds resident tuition charged back to the public school district of his/her residence, and which 2) allowed an individual residing in a community college district who wishes to enroll in a program not offered by his/her own community college to enroll in another district and have the amount by which out-of-district tuition exceeds resident tuition charged back to the community college district of his/her residence.

Advantages

a. A chargeback system allows a student to take a program not offered at his/her community college at a cost which is essentially the same as if the program were offered by the district of the student's residence.
b. A chargeback system assures a community college/district, when enrolling a non-resident student, that it will receive revenues representing that portion of the cost of the program normally covered by local property tax revenues.
c. A chargeback system discourages the recruiting of students by a district other than the one in which the student resides.
d. A chargeback system would provide for tax payer equity throughout the state.

Disadvantages

a. It is sometimes difficult to determine whether the program in which the student wishes to enroll in another district is in fact offered by that student's own district.
b. Difficulties may arise if statutes do not address non-credit programs, second degrees, etc.
c. Small districts with less programs may pay for more chargebacks than they receive.
d. A chargeback system requires substantial expenditures in terms of time, personnel, and record-keeping costs.

The Illinois law and the events which precipitated it come from a perceived inequity within the state's community college system. While the whole state of Illinois was using the 27 community colleges and deriving benefits from them, only a portion of the state was supporting them through local taxes.

4. Uniform Out-of-District Fees

Current Status

The principle of making out-of-district fees uniform is not being used, either in Texas or any other state, nor was it found to have ever been utilized as a method of more nearly equalizing the pro rata share of community college/revenue costs.

Advantages

a. Has potential for generating additional revenues for community colleges
b. Would assure that a community college, when enrolling an out-of-district student, that it will receive revenues representing that portion of the cost of the program normally covered by local tax revenues.
c. The establishment of uniform out-of-district fees might serve to strengthen the state's hand in arguing against the formation of any new community/junior college districts.

Disadvantages

a. Fee might prove to be so high as to financially limit access to out-of-district students – could financially disqualify people from attending community/junior colleges.
b. Conceptually, uniform fees more nearly reflecting cost of instruction seems of itself to be a contradiction in terms – cost of instruction remains the same with or without the implementation of this concept.
c. Could be a move – a philosophically backward move – toward centralized state control.
d. Removes local control over setting out-of-district fees practical for a particular socio-economic service area; i.e., out-of-district fees may, of necessity, need to be lower in Laredo than in Midland or face the prospect of limiting access to a segment of student population needing to be served.

5. All State Property in a Community College Tax District

Current Status

While most of the population in Texas today is within commuting distance of a community college, many people live outside the taxing districts of the colleges and do not support the districts through ad valorem taxes. Forty-four percent of the property value of the state also lies outside any community college district and does not help support the community college system of the state. Some of the colleges are not as strong as they might be because a majority of their students reside outside the district and thereby gain a "free ride" from a local tax. By the early 1960's, when the first statewide coordinating function for higher education was established in Texas, a number of junior college districts were already well established. These colleges developed where the need was most keenly felt.

As commendable as these early efforts to establish junior colleges in Texas might have been, and as important as they have proved to be to their local communities, their early development removed the initiative for statewide planning and made later planning efforts in Texas much more difficult. The Coordinating Board

conducted early studies to determine where additional community colleges might be needed in the future, and to suggest territorial boundaries of "service areas" to be served by existing colleges.

At least two other states have expanded the boundaries of their community college districts in recent years to include all state properties in a community college district: Washington and Illinois.

State of Washington. The Community College Act of 1967 established a system of community college districts in Washington, separate from common school districts and inclusive of all areas of the state.

State of Illinois. In 1984, the state of Illinois passed Public Act 84-509 which mandated the inclusion of all areas of the state into a community college district by the year 1990. When P.A. 84-509 was adopted, 42 community unit and high school districts remained outside of community college territory. This legislation also created a "chargeback" provision which required those school districts which did not voluntarily join a community college district to pay an extra fee to support their students at the college. The law reads:

> "The board of education of any non-high school district or any school district maintaining grades 9 through 12, any part of which lies outside a community college district, may levy an additional annual tax upon that part of the taxable property of the school district lying outside a community college district in an amount sufficient for community college educational purposes for the payment of tuition."

In 1990, the chargeback provision will expire and the mandated territory within all community college districts will take effect. The Illinois law and the events which precipitated it come from a perceived inequity within the state's community college system. While the whole state of Illinois was using the 27 community colleges and deriving benefits from them, only a portion of the state was supporting them through local taxes.

Advantages

a. Would produce greater financial support for all colleges.
b. Would end all boundary disputes.
c. Would create a comprehensive state system for community colleges.
d. Enhances the equality of access and financial burden.
e. Supports TEC 130.0011 regarding service to service areas.
f. Recognizes that the 49 community college districts already serve people from throughout the state.

Disadvantages

a. Creates larger geographical areas demanding services and facilities.
b. Difficult to get through the Texas legislature.
c. Voters would likely oppose it on the basis of an added tax.
d. Could produce identity issues for existing 49 districts.
e. Could produce a dilution of voting strength in founding and/or existing districts.

Currently, a decision to seek annexation must evolve from the out-of-district community that, in many cases, are already receiving the services without financial obligation to perpetuity. The adage "why should we buy the cow when we already have the milk?" aptly describes the results of the current annexation code.

If an area desires full partnership it should not be excluded simply because current borders do not touch.

6. Revise Current Annexation Code

Current Status

As noted previously, the current sections of the annexation code are a patchwork response to modify a relatively inflexible general law for specific purposes. Statutory changes which may help Paris, Texarkana, and Alamo may not have any relevance to El Paso, Laredo, and Clarendon.

The current sections of the Education Code interchangeably use terms such as "annexation," "enlargement," "extension," and "adding a new territory." There are sections defined specifically by brackets that are directed toward certain geographical or scholastic dimensions.

Currently, a decision to seek annexation must evolve from the out-of-district community that, in many cases, are already receiving the services without financial obligation to perpetuity. The adage "why should we buy the cow when we already have the milk?" aptly describes the results of the current annexation code.

Other problems with the current code are such terms as "taxpaying electors" and "qualified electors" and what these terms mean. In carrying out annexation activities under current law, this presents a significant problem. School districts and county commissioners do not always have a common list from which the 5% requirement is determined. Often one citizen roster is registered voters while the other is taxpayers; yet the code specifies "taxpaying electors." It is difficult to merge the two lists.

Advantages

a. Could reduce "patchwork quilt" effect of current law.
b. Could produce flexible and consistent mechanisms useful to everyone in the Texas community college system.
c. Would recognize problems with existing laws and regulations.

Disadvantages

a. Those community colleges that do not derive direct benefit may be comfortable with current law.
b. Those community colleges that have no plans to extend their district size may be comfortable with the current law.

RECOMMENDATIONS

The Advisory Committee is recommending ten changes to the current education code which will address the issues summarized in this report. Each recommendation is intended to streamline the code; create statutory uniformity; and improve access, quality and equity via annexation. Also included is a recommendation related to C.B. Rule 5.264 "Conversion and Establishment Provisions" (Chapter 5, Subchapter M). These recommendations, in legal language, are also presented in Appendix II.

The Advisory Committee on Annexation makes the following recommendations.

In regard to service areas, the committee recommends that:

- The Texas Higher Education Coordinating Board should make official the service areas of the public community/junior colleges, based on current out-of-district approvals, with any additions to those areas to be recommended to the Board by the regional councils.

In regard to annexation, the committee recommends that:

- Only territory which has been laid out as *within the exclusive service of any college area* may be annexed.
- Any territory which is part of a college's approved service area may be annexed regardless of whether the geographical boundaries of the existing district and the territory meet.
- Only the community college district Board of Trustees may order an election held.
- The election order must be posted in at least three public places, including one within the district of the proposed new territory.
- All annexation elections shall be held on one of the four uniform election dates.
- Those eligible to vote in the annexation election shall include all registered voters in the current district and the district as proposed. A simple majority, either for or against the annexation, shall cause the result.
- An order canvassing the returns of the election must be filed with the Texas Higher Education Coordinating Board.

Current law requires the annexation decision to be determined wholly by the new territory. While this appears on the surface to be democratic, it fails to recognize service which is or has been provided by the existing district and also fails to acknowledge the principle of one person, one vote.

In regard to disannexation, (overlapped territory) the committee recommends that:

- Territory which has been annexed to a college district may not be disannexed if the district has invested money in land, buildings, or facilities in the annexed territory.

In regard to Coordinating Board rules, the committee recommends that:

- The Texas Higher Education Coordinating Board may grant a waiver of the "enrollment cap" rule for out-of-district locations if certain established criteria are met.

DISCUSSION/RATIONALE

Legislative Proposal on Service Areas

The service areas of the community college districts have been established over long years of service, have been approved by the regional councils, and have been monitored by the Coordinating Board. This recommendation includes continued use of the regional councils as the official mechanism for recommending additions of changes after the service areas are initially designated. The committee believes that making the service areas official, based on current approvals, should be done as soon as practical, in order to eliminate concerns, forestall any disruption of services, and preclude territorial disputes. The committee further recommends that new service area designations not disrupt current services.

Legislative Proposals on Annexation

The recommendation on 130.063 provides for annexation of any territory, regardless of whether it is contiguous or not, as long as it is in the designated service area of the community college. The precedent for this recommendation is the Tomball ISD/North Harris County annexation where contiguous territory did not exist. There are territories that might be interested in annexation to an existing community college but the contiguous requirement makes this reality impossible. If an area desires full partnership it should not be excluded simply because current borders do not touch.

The recommendations for 130.065 and 130.066 are directed at the goals of easing and simplifying the current annexation code. The existing community college Board of Trustees would decide if and when it desired to pursue annexation. It would vest the right of determination of the district's geographical boundaries with the founding district's residents yet provide those districts who desire to extend their boundaries the opportunity to do so. The call for such annexation would be made by the current community college Board without the unnecessary impediment of petitions, county commissioners, and school boards. The community college Board which calls the election shall also bear the cost.

The existing community college Board of Trustees would decide if and when it desired to pursue annexation.

Community colleges offer out-of-district instruction within their designated service area. Coordinating Board rules require community colleges providing out-of-district instruction to meet the same standards that are established for on-campus programs. The credentials of the faculty, level of support services, and course curriculum must be the same. The Coordinating Board applies these qualitative standards *before* giving final approval to an out-of-district proposal. Across the state, thousands of Texans are *accessing* the same quality instructional programs (in out-of-district locations) that are being provided by the community colleges on their main campus.

This proposal strengthens the "service area" concept by assuring that *only* that territory approved by the Texas Higher Education Coordinating Board as a "service area" for a community college can be annexed.

Section "C" adds the requirement, presently missing, that a posting of the annexation must be made in the territory to be annexed. It is inappropriate for any vote, even that under current law, to be taken without official notice being made in the territory proposed for annexation.

Using the uniform election date as provided in 41.001 helps to reduce the unnecessary costs of special elections and helps to insure that the number of persons voting is as high as possible. This reduces the probability that annexation could occur with only a small number of residents involved in such a vote.

The last and most significant recommendation is the "unified vote." Current law requires the annexation decision to be determined wholly by the new territory. While this appears on the surface to be democratic, it fails to recognize service which is or has been provided by the existing district and also fails to acknowledge the principle of one person, one vote. Whether this service is being provided in the current district or in an out-of-district location, the costs of such services are being underwritten by those paying taxes to perpetuity in the existing district. In addition, the "out-of-district" student from the territory being annexed pays only a direct-use differential on tuition and fees. This inequity can only be addressed in law by allowing those in the existing district to have an *equal* say in the proposed annexation.

Ample precedent exists in the law for the unified vote.

Ample precedent exists in the law for the unified vote. In fact, the proposed unified vote for community colleges is much more democratic than the annexation procedures enjoyed by governmental entities such as city and school districts. The statutes which govern municipal elections allow unilateral action by city councils as the requirement for annexation of new territory. Section 130.073(a) of the current code also prescribes a unified vote for the Alamo Community College District. It also requires single member district Trustee elections which the Texas Public Community/Junior College President's Association is on record as supporting under permissive legislation. The unified vote rests on the democratic foundation of one person, one vote. In responding to the suggestion that this proposal is taxation without representation, it can be argued that this is consistent with the basic tenets of democracy – that no one vote is more important than another. The persons in the existing district should have their voice counted, in equal terms, with those in the territory to be annexed.

The unified vote rests on the democratic foundation of one person, one vote.

Legislative Proposal on Disannexation

Current law would allow a community college to buy land and construct facilities within an annexed territory only to have it disannexed in the future should the territory of two community college districts overlap. The current law makes no distinction between districts who have made capital investments and those who have not.

The proposed addition to 130.069 would make disannexation impossible when investments in land, buildings, or facilities have been made by the college which contains the territory before overlapping occurs.

Proposal on Coordinating Board Rule 5.268

In order to provide expanded educational opportunities for the citizens of those communities where a senior college and an out-of-district junior college center or extension unit are operating cooperative programs (i.e., Texas A&M University/Blinn College) and the programs meet the following six conditions, the Texas Higher Education Coordinating Board should have the latitude of waiving any predetermined cap on enrollment. The six conditions are:

1. the program is operating under the out-of-district program rules of the Coordinating Board;
2. the junior and senior colleges are working in a cooperative effort – not a competitive one;
3. the cooperative arrangements between the junior and senior college provides cost savings that offset the need for local tax support;
4. students benefit from the cooperative efforts (better class scheduling opportunities, choice of open and selective admissions institutions, etc.);
5. the integrity and mission of both institutions is protected; and
6. the quality of both programs is insured within the Coordinating Board (and SACS) guidelines.

The waiver affords both institutions the opportunity to enhance educational opportunities for students, effect reductions in the cost of educational programs, protect the integrity and mission of both institutions, and insure quality programs.

APPENDIX I

Annexation Survey Results
From Texas Community Colleges (1988)

1. What, if any, specific concerns do you have with the current law and code regarding annexation?

Concerns expressed (in general categories) were:

- Law is too lenient; too democratic; favors those outside community college districts to detriment of existing colleges.
- Law is too complicated and complex; a composite of special interest legislation that places special limitations on colleges established prior to 1960.
- There should be more leverage for people already in the taxpaying district; community colleges are serving an inordinate number of students outside legal district yet receiving no support.
- Current laws do not promote tax equity and make expansion of existing districts virtually impossible.

2. Has your district been involved in annexation in the past 10 years? When? How? What was the result?

*Yes	= 9	Passed	= 6
No	= 32	Failed	= 5

*Includes Paris Junior College; Amarillo and Del Mar Colleges that annexed territory that came into the city boundaries as they were annexed by the respective city governments; and Temple Junior College that expanded to the city limits of Temple using permissive legislation; and Austin Community College who annexed the Leander I.S.D. in 1985.

3. What percentage and number of your credit enrollment comes from your "service area" and not the taxpaying district?

less than 10%	= 6	50-60%	= 6
10-20%	= 5	60-70%	= 4
20-30%	= 7	70-80%	= 2
30-40%	= 2	80-90%	= 1
40-50%	= 5	over 90%	= 1
		No Answer	= 2

4. What is the percentage and number of people who live outside your local tax supported district but are in your "service area"?

No defined service area or service area and district the same	= 5
Less than 50,000	= 5
50,000 - 99,999	= 7
100,000 - 149,999	= 4
150,000 - 199,999	= 6
200,000 - 249,999	= 2
More than 250,000	= 8
Non-applicable answers	= 3
No answers	= 1

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5. **Do you see that number (question 4) going up in the next 5 years? If so, what percentage?**

   The responses ranged from 14 colleges that expected no growth in the "service area" to 1 college that projected growth at 50% in the next 5 years. The majority response was *modest growth* in the 2-3% range per year.

6. **Do you have specific advice regarding this Committee and our task?**

   - Revise the law or find a way to receive greater equity for service area students.
   - Simplify process/encourage annexation/create inc[illegible]ve.
   - Create a law that allows for reasonable methods of [illegible]ration.
   - Create change through new legislation.
   - Service areas should be clearly defined. The "Gen[illegible] Agreement" will not hold up should a dispute ari[illegible] annexation.
   - This type of state-wide legislation is the way to go.
   - Junior college district expansion is in the best inter[illegible]d concerned.
   - Good Luck! We need to make the process easier to en[illegible] successful annexation.
   - Yes. Try to get the Hudson Bill passed.
   - We need greater flexibility in law and Coordinating Board rules.
   - Formulate an equitable procedure where residents of service areas could be part of junior college financial base without election.
   - Contiguous requirement for annexation is inappropriate.
   - The legislature should place every county in the state in one of the existing community college districts.

APPENDIX II

Legislative Proposal
Revisions to the Texas Education Code
and Coordinating Board Rules

I. Legislative Proposal on Junior College Service Areas

Section 130.001(b) of the Education Code will be amended by adding subsection (6) as follows:

(6) establish service areas for each public junior college district.

II. Legislative Proposal on Annexation

A. Section 130.063 of the Education Code would be amended as follows:

Territory may be annexed to a junior college for junior college purposes only, by either contract or election.

B. Sections 130.065 and 130.066 will be deleted and replaced by a new section as follows:

(a) Any territory may be included within the boundaries of a junior college district, herein called "district," for junior college purposes, in the manner hereinafter specified; provided such territory has been laid out by the Texas Higher Education Coordinating Board within the exclusive service area of the district.

(b) The governing body of the district may order an election to annex territory for junior college purposes to be held within the boundaries of the entire district as proposed to be changed on the question of whether the boundaries of the district shall be changed to include the proposed territory. The ballots for such election shall have printed thereon "For" and "Against" the boundary change. All registered voters residing within the boundaries of the entire district as proposed to be changed shall be qualified to vote at such an election.

(c) The governing body of the district calling an election hereunder shall give notice of any such election by causing a substantial copy of its order calling the election to be posted in at least three public places within the boundaries of the district as proposed to be changed, including at least one public place within the territory to be annexed, and published at least one time in a newspaper of general circulation within such boundaries.

(d) The election shall be held on a uniform election date as provided by section 41.001 of the Election Code but no sooner than thirty days after the date on which the district passed the order calling the election.

(c) The returns of any such election shall be canvassed by the governing body of the district and if a majority of the persons voting in the election vote for the boundary change, the governing body of the district shall, in its order canvassing such returns, declare the boundaries of the district changed to include the territory described in the order calling the election. Such order may also include the name by which the district as changed shall be known.

(f) The governing body of the district shall file a copy of its order canvassing the returns of the election with the Texas Higher Education Coordinating Board.

III. Legislative Proposal on Disannexation

Section 130.069 Disannexation of Overlapped Territory will be amended as follows:

(a) All junior college districts whose boundaries have or may hereafter become established so that they include territory which prior to such establishment lay, and shall continue to lie, within the boundaries of another junior college district shall have the power to disannex such overlapped territory. (no change)

(b) Upon certification by the governing board of such a junior college district to the county board of school trustees of the county in which its college is located that such an overlapping condition exists, the county board may by resolution disannex the overlapped territory from the district, describing such territory by metes and bounds. (no change)

(c) Territory may not be disannexed from a junior college district if that district has invested money in land, buildings, or facilities in the territory to be disannexed. (addition)

IV. C.B. Rule 5.268 (chapter 5, subchapter M) would be amended as follows:

The Coordinating Board may, after appropriate review, grant a waiver of the enrollment cap rule for a junior college operating and approved out-of-district center or extension unit in a community where a public senior college is located if the two schools have in place partnership or other cooperative agreements that provide for the sharing of facilities, services or other resources in such a way as to enhance educational opportunities for students, effect reductions in the costs of educational programs, protect the integrity and mission of both institutions, and insure quality programs.

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